



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 494

IN THE MATTER OF KEVIN HONAN

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and Kevin Honan ("Rep. Honan") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Honan had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Honan violated G.L. c. 268A, §'3 and 23(b)(3).

The Commission and Rep. Honan now agree to the following facts and conclusions of law:

1. Rep. Honan has served in the state legislature from January 1987 to the present. During that time, he has served on various committees including the Government Regulations Committee (vice chairman) and the Health Care Committee (vice chairman).

2. In addition, Rep. Honan, as a member of various legislative committees, has participated in many hearings on bills which impact on the insurance industry. Such participation has included voting on whether such bills should be reported out of committee. Rep. Honan has also voted on bills which impact the insurance industry when they reached the House floor.

3. During the period relevant here, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Company, Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. At all relevant times, Sawyer was a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciled life insurer, its activities are more comprehensively regulated by Massachusetts than by any other state.

4. During the period relevant here, Ralph Scott ("Scott") was also a lobbyist for Hancock.

5. During the period relevant here, William Carroll ("Carroll") was a registered legislative agent for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of the largest life insurance companies doing business in Massachusetts.

6. At all relevant times, Rep. Honan knew that Sawyer and Scott were Massachusetts registered lobbyists for Hancock. Rep. Honan testified that he was never lobbied by Sawyer, Scott or Carroll.

7. Lobbyists are employed to promote, oppose or influence legislation.

8. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators

through meals, drinks, golf and sporting events in order to develop the desired goodwill and personal relationships.

9. In 1991, Honan attended a Boston Celtics game as Scott's guest and sat in Hancock's private skybox at the Boston Garden. The ticket value was approximately \$70.00.^{1/}

10. Between March 10, 1993 and March 14, 1993, Rep. Honan and his guest stayed at the Plantation Resort at Amelia Island, Florida, where an educational conference sponsored by the Conference of Insurance Legislators was being held. Rep. Honan neither registered for nor attended the conference.

On March 12, 1993, Sawyer paid for Rep. Honan's golf expenses at the Valley Course at Sawgrass, a golf course located at Ponte Verde, Florida. The cost of Rep. Honan's golf expenses was \$130.00.^{2/}

On the evening of March 12, 1993, Rep. Honan and his guest ate dinner at the Ritz Carlton with a group of Massachusetts legislators and lobbyists. Rep. Honan did not pay for this dinner. Rep. Honan testified that although he knew that Massachusetts lobbyists were in attendance, he did not know who paid for the meal. Carroll, the lobbyist representing LIAM, paid for this dinner.^{3/} The total cost of the dinner was approximately \$3,000. Honan and his guest's pro rata share of the cost of the dinner was approximately \$150.

11. Section 3(b) of G.L. c. 268A prohibits a state employee from directly or indirectly receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

12. Massachusetts legislators are state employees.

13. Anything worth \$50 or more is of substantial value for §3 purposes.^{4/}

14. By accepting the basketball game ticket from Scott and the golf entertainment from Sawyer, all while Rep. Honan was in a position to take official actions which could benefit those lobbyists, Rep. Honan accepted items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so he violated §3(b).^{5/}

15. As the facts above indicate, Rep. Honan received, in addition to the \$200.00 in gratuities, a \$150 meal where he did not know the specific identity of the source of the entertainment.

16. Section 23(b)(3) prohibits a public employee from knowingly or with reason to know acting in a manner which would cause a reasonable person knowing all of the circumstances to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties.

17. By accepting entertainment of \$50 or more in value where he did not know the specific identity of the donor, but had reason to know that the donors were Massachusetts lobbyists, Rep. Honan acted in a manner which would cause a reasonable person knowing all these facts to conclude that the lobbyists present could improperly influence him in the performance of his official duties.^{6/} In other words, Rep. Honan knew or had reason to know that his actions would create an appearance of favoritism. In so doing, he violated §23(b)(3).^{7/}

18. The Commission is aware of no evidence that the gratuities or gifts referenced above were provided to Rep. Honan with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Rep. Honan took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities or gifts. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{8/}

19. Rep. Honan fully cooperated with the Commission throughout its investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Honan, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Honan:

(1) that Rep. Honan pay to the Commission the sum of one thousand and fifty dollars (\$1,050.00) for violating G.L. c. 268A, §3(b) and 23(b)(3);^{1/} and

(2) that Rep. Honan waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} Rep. Honan has no specific recollection and Hancock has no records indicating the exact date the basketball game occurred. Rep. Honan testified that he believed the ticket value was approximately \$30.00.

^{2/} Rep. Honan testified that he was unaware of the value of the golf.

^{3/} The Commission has evidence Carroll subsequently received contributions of \$500 and \$600 from two of the Massachusetts lobbyists who were at this meal.

^{4/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{5/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8*, issued May 14, 1985, prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called "business lunch". *In re U.S. Trust*, 1988 SEC 356. Finally, §3 applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

On the present facts, §3 applies to the lobbyists entertaining Rep. Honan where the intent was generally to create goodwill and the opportunity for access, even though specific legislation was not discussed.

^{6/} Moreover, the possibility can never be eliminated that Rep. Honan would later be told of the specific sources of the various gratuities described above. This only adds to the appearance concern created by such conduct.

^{7/} This conduct also raises issues under §3 discussed above. Nothing in §3 requires that the public official know the source of the gift. All that is required is that the public official know that he is receiving the gift for or because of official acts or acts within his official responsibility. On the foregoing facts, that could be inferred even though Rep. Honan did not know the specific identity of the donor. In any event, because this is a matter of first impression, the Commission has decided to resolve this conduct pursuant to §23.

^{8/} As discussed above in footnote 5, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuity is being given in exchange for a specific act performed or to be performed.

^{9/} This amount is three times the value of the \$350.00 in prohibited gratuities received by Rep. Honan in violation of §3. It represents both a disgorgement of the gratuities and a civil sanction.